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Unregistered Polygamous Marriage of Civil Servants and its Implication for Wives' Financial Problem, Social Fate and Loss of Children's Welfare

Abstract

Unregistered polygamous marriage carried out by civil servants has serious implication for wives' financial problem, social fate and loss of children's welfare. The Marriage Law allows polygamy with very strict requirements. In the Government Regulation governing civil servant polygamy, justice is the main requirement in polygamy, because it really determines welfare in polygamy families. Based on the results of in-depth interviews and participant observation by using the constructivism paradigm and socio-legal approaches, it was found that unregistered polygamous marriages carried out by civil servants have implication for the disciplinary punishment of employees, so the polygamists got the sack. This implies their family economic problems, because there is not enough income to meet the needs of family life. Finally, neglect and divorce occur. Wives and children will be victims. Hence, it is necessary for the government to regulate particular policies for the polygamists of civil servants, to save their wives and children's life. Firing the polygamists is not such a solution, but will instead create more complicated problems for their families.

Keywords: Unregistered Polygamous Marriage, Civil Servant, Justice and Family Welfare.

Introduction

In one of the studies, Nurmila (2016) stated that wives never accept their husband's polygamous marriages either legally or illegally. None of the existing wives', in legal or illegal polygamous marriages, could accept their husband's polygamous marriage/s but legal polygamy provided better conditions for all the parties in this type of situation. No woman can accept polygamy, while it happens among the Indonesian people. In addition, Andrew March (2011) argued that the main reason to reject

polygamy is due to gender quit, particularly, women's equity. There is inferiority towards women, disfavor for children, issues of justice in marital relations, and abuse of the family economy.

However, Roibin (2007) has different result of study about the *Kyais* in East Java. He found that polygamy among the *Kyais* thrive because the reality of socio-cultural upholds kyai's figure as the pious persons with high religious understanding as well as the role models for

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community. Many women actually want to be married by the *Kyais* as being the second, third and fourth wives.

Polygamy has become a part of Javanese life, especially among kings, *Kyais* and civil servants. John Joseph Stockdale (2011) stated that, "Among Javanese polygamy, they married as many women as possible and also took female slaves as their concubines". Indeed, according to Raffles (2008), polygamy in Java has been mostly conducted by kings and public servants. They have a very strong power relationship to marry many women because they have the power to make rules and distribute wealth to his concubine wives.

President Soekarno has already practiced polygamy with Hartini for the first time. At the time, the government had issued Decree No. 19 of 1952 regulating the benefits of polygamy for employees. It was said that the government gave double salaries to polygamy employees as well as double retirement benefits for polygamy widows (Wieringa, 1989). Having married Fatmawati (1943-1956), Sukarno asked for her permission to marry Hartini (1953-1970). It was the beginning of Soekarno's polygamous life which has become a history and always been controversial, because there have still been some episodes of his polygamy, namely when he married Kartini Manopo (1959-1968), Ratna Sari Dewi (1962-1970), Haryati (1963-1966), Yurike Sanger (1964-1968) and Hedy Djafar (1966-1969) (Priyatna, 2015).

Long before Sukarno's polygamy, an emancipation figure of Indonesian woman, Kartini had first felt the polygamous life. She had become the fourth wife of Rembang Regent, Djojo Adiningrat, on November 8, 1903 (Rosyadi, 2010). She could not avoid the marriage because of an order from her father, the regent of Sosroningrat, who was seriously ill. She wrote a letter to her best friend, Rosa Abendanon, dated July 10, 1903, entitled "Personal":

"I am the fiance of the Regent of Rembang, a widower with seven children and two wives (concubines). My crown has disappeared from my forehead. Now I am not a little more than the rest. I am like thousands of other (women) that I want to help, but the number (apparently) is only added to my number. Oh my God, have mercy on me. Give me strength to endure my suffering."

Hence, it is proven that Kartini and Soekarno are parts of the polygamy portrait in Indonesia. Polemic and polygamy controversy seem endless. This portrait is based on the social history of Indonesian society. Polygamy has actually existed for a long time and it happened among kings and regents. It was considered as a pride and a way to increase one's social standing. A woman was very proud

and honored to be married by kings and aristocrats, to be the second, third, and so on. Likewise, kings and nobles were very proud and honored to marry the daughters of kings and nobles. This has been entrenched and widely followed by the community.

In contrast to Soekarno's regime, Suharto's regime began to restrict polygamy, especially for civil servants. The polygamy campaign would be contradicted to the will of the state. It is also impossible for media to license such a struggle (Brenner, 2006). This is stated in Law Number 1 of 1974 concerning Marriage and specifically in Government Regulation Number 10 of 1983 concerning Civil Servants' Marriage and Divorce Permit. Based on these two regulations, a civil servant might practice polygamy when he is able to fulfill two tough requirements, namely getting permission from previous wives and approval from the leader of his institution (Blackburn, 2004).

Hence, Razak et al., (2020) argued that polygamy has a close relationship with a *siri* marriage, which is understood as a secret marriage. The enactment of polygamy regulations leads someone take a shortcut to practice polygamy. Through *siri* marriage, they will get easier procedure and avoid the staffing sanctions. It is clearly seen from the data of civil permit application in the religious court below. Based on the Annual Report of Central Java Religious Court, the application for civil servant polygamy permits from 2010 to 2018 is:

Table 1.

Data on Number of Civil Servant Polygamy Permit Applications

Year	Amount
2010	4
2011	0
2012	0
2013	0
2014	0
2015	4
2016	9
2017	6
2018	3

Sources: The Annual Report of the Central Java Religious Court from 2010-2018

Based on the data, it shows that few numbers of civil servants has legally registered their polygamy permits to the religious court. This fact is very interesting, because their polygamy applications to the religious court cannot be used as a portrait of the polygamy practices among civil servants. This indicates that much secret polygamy have occurred among them, whereas they could get

employment sanctions of dismissal when they were caught practicing polygamy illegally. As a result, he will be fired so this can give an impact to his family economic problems. His wives and children will meet serious problems of economics and welfare.

This study, therefore, will discuss the practice of registered polygamy and *sirri* polygamy among civil servants. As a researcher, I followed the process of scientific research to answer the problems, so that my research results can contribute to science and society (Wignjosoebroto, 2013). This study is a research with qualitative tradition (Alwasilah, 2012). The method used was socio-legal approach by combining doctrinal and non-doctrinal approaches (Irianto, 2009). This approach seeks to combine the legal approach with the social science approach (Sidharta, 2013). Primary and secondary data were obtained from the observation, interviews, and documentation (Creswell & Creswell, 2017). Finally, the data were interpreted and analyzed using the existing theories and concepts.

Polygamy and Marriage Registration: Indonesian Legal Rules

In the pre-independence until the independence era of Indonesia, the practice of polygamy has been generally carried out by elite communities, namely the kings, regents, civil services, and religious elites such as the *kyais* (Poerwanti, 2003). Their polygamy practices have become a legal culture in the communities, even have become guidelines for other people to practice it. Therefore, criticism to polygamy practices had begun to be conveyed in the form of books and writings. The struggle against polygamy has continued, but the practices were still widely carried out until the Independence Day. Some nationalist and socialist women's organizations strongly opposed the practice of polygamy, namely: the Marhaenis Women's Movement and PERWARI (Association of Women of the Republic of Indonesia), whose members were mostly wives of officials, civilians and the military. Finally, on December 22, 1973, the Marriage Bill was approved and then, on January 2, 1974 it was ratified as Law Number 1 of 1974 concerning Marriage. The law has taken effect since October 1, 1975 by issuing the Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 1974 (Usman, 2003).

The rules on polygamy are contained in Article 3 of Law No. 1 of 1974 concerning Marriage, namely: (1) Either a man or a woman principally can only marry one spouse. (2) The court might permit a husband to have more than a wife when the other wives allow him to do

polygamy. Furthermore, religious courts can grant polygamy permits if they meet both cumulative and alternative requirements. The cumulative requirements are regulated in Article 5 Paragraph (1) of Law Number 1 of 1974 concerning Marriage, namely: a) There is a written agreement from his wife; b) There is certainty that husbands are able to guarantee the necessities of life of their wives and children; c) There is a guarantee that husbands will be fair to their wives and children. Whereas the alternative reasons are regulated in the Article 4 Paragraph (2) of Law Number 1 of 1974 concerning Marriage, explaining alternative conditions. It is said that someone is allowed to choose one of the alternative reasons to practice polygamy, namely: a) The wife cannot carry out her obligations as a wife; b) The wife gets a disability or an incurable disease; or c) the wife cannot give birth to offspring.

This rule actually asserts that the marriage system in Indonesia is monogamy. Nevertheless, in certain circumstances polygamy is possible on the basis of court approval by fulfilling the requirements determined by law. This rule applies to anyone who wants to practice polygamy, including civil servants, because they are considered state apparatus who must become good role models for their communities. In addition, the rule of polygamy is also particularly regulated in Article 4 Paragraph (1) Government Regulation Number 45 of 1990 concerning Marriage Permit and Divorce of Civil Servants.

Based on this rule, civil servants who will have more than one wife must get prior permission from the leader of workplace institution. Furthermore, the Article 5 Paragraph (2) Government Regulation Number 45 of 1990 explains:

"Every leader, who receives the civil servant's requests for permission either to divorce or to have more than one wife, must give consideration and forward it to the officials through hierocratic channel within a period of no later than three months from the date of submission."

It is clear stated that civil servants must get permission from their leaders before practicing polygamy. This permit requirement is needed because they are public servants who must become role models for the community in their behaviors and actions. Moreover, they are demanded to comply with applicable laws and regulations, including the law of family life. So, many civil servants consider that the requirement is very difficult to be fulfilled.

Moreover, polygamy that does not meet the requirements of the law is considered a violation, and the perpetrator will get employment sanctions. These sanctions are clearly written in

the Government Regulation No. 53 of 2010 concerning Employee Discipline. It is stated that civil servants with more than one wife without permission can be subjected to one of the most severe disciplinary sanctions, namely reducing the rank of less than 3 years; declining the position to a lower level; releasing from work; dismissal with respect as a civil servant, and dismissal with respect not as a civil servant.

The threat of employee discipline sanction for the civil servant polygamists without leader permit is very heavy. If they ask permission to their leaders, they must first get permit from their previous wives. So, this is one of the main reasons for civil servants not to permit their leaders and record their polygamy.

Practice of Unregistered Polygamous Marriage by Civil Servants

There are some cases about the practice of unregistered polygamy delivered in this study. The first case happened to Mr. OA. He practiced unregistered polygamy because his biological needs as a husband were not met.¹ He practiced it when he was still a candidate of civil servant and eventually got a staffing sanction because the second wife reported him to the head of institution.²

Mr. NS. has a different reason to practice unregistered polygamy. He admitted that his polygamy was carried out because of having fallen in love with another woman, but he did not want to hurt his wife. So he practiced polygamy without asking permission from his wife.³ Fortunately, his marriage with the two women could survive till now. There has not been a divorce among them and staffing sanctions to him. This is because the first wife did not complain and report his *siri* polygamous marriage to the leader of his workplace.

Another case also comes from Mr. P. who has practiced unregistered polygamy due to disharmony relationship with his wife. He practiced it without asking for his wife's permission. Lately, his polygamous marriage has been found out by his wife, and she immediately reported him to the leader of his institution. As a result, he got staffing sanction based on Decree of the Minister of Finance No. 124/KMK.01/UP.7/2008 concerning Dismissal

with Respect Not at Civil Servants' Request.⁴ Subsequently, this Dismissal Decree was sued in the Jakarta State Administrative Court. Fortunately, Mr. P won the lawsuit through the Decree of the Personnel Advisory Agency Number 062/KPTS/BAPEK/2010 concerning Strengthening Disciplinary Punishment, based on the Minister of Finance Decree Number 124/KMK.01/UP.7/2008 concerning Honorific Dismissal not at the Civil Servant's own request. Furthermore, he applied for the re-appointment of Purnomo as a civil servant. Instead, he got indisciplinary sanction namely demotion at a lower rank of 1 year, as determined in Article 6 (4) letter a Government Regulation Number 30 of 1980 concerning Discipline Regulation of Civil Servants. This decision was further upheld in the cassation decision by the Supreme Court No. 229K/TUN/2011.

Unregistered polygamous marriage is also carried out by Mr. S, a civil servant within the Ministry of Trade's Department of Commerce. He practiced it due to his habit of loving other women. According to Mrs. B, his first wife, he often did not go home and was not responsible for the family. Currently he has been dismissed from civil servant because he has been proven to have committed a criminal act of corruption and served his sentence at the Kedungpane Prison in Semarang. However, Mrs. B did not sue for divorce even though Mr. S had left the prison and remarried for the umpteenth time.⁵

The last case emerges from Mr. T, as a lecturer as well as an advocate of the Ministry of Religion. He practiced polygamy with his former student without permit from his wife. But he often quarreled with his second wife during polygamous marriage. This is because Mr. T was not responsible for her living needs. At the end, Mrs. N, as the second wife, reported him to the head of his workplace to demand his responsibility. At the same time, Mr. T was also undergoing a trial in court on suspicion of fraud. Finally, Mr. T got staffing sanction of dismissal from civil servants as well as prison sentence.

Based on the results of the in-depth interview above, it is concluded that the illegal culture of polygamy among civil servants occurs because of many factors and underlying reasons, namely:

1. There is a great desire to get married again without divorcing the previous wife and not asking permit from the previous wife.
2. Avoiding staffing bureaucracy procedures that are considered long and

¹Indept Interview with Mrs. EV, Mr. OA's second ex-wife, who has now remarried and follows her husband to live in Jakarta. The interview was conducted at his bag shop in Mangga Dua Square Jakarta on August 25, 2019

²Indept Interview with former Vice Chancellor II, Finance and Personnel Department IAIN Walisongo Semarang, Mr. Drs. H. Machasin, M.Psi, on August 27, 2019

³Indept Interview with Mr. NS. on August 19, 2019 in the Room of the Family Law Lecturer at the Faculty of Sharia UIN Walisongo Semarang.

⁴Indept Interview with Dr. Effendy Lord Simanjuntak, advocates who handle employment cases on behalf of Mr. P, on Sept 11, 2019, in his Law Office.

⁵Indept Interview with Mrs. B in her office at Sultan Agung Islamic Hospital Semarang, September 17, 2019

complicated. Civil servants who conduct *siri* polygamous marriage are reluctant to go through the staffing bureaucracy, because they have to get permission from the head, if they want to process the request for polygamy in the religious court. In addition, they did not carry out the procedure for obtaining the head's permission because they must first get a wife's permission. Meanwhile, to get permission from the first wife is a very difficult thing to do, because it can risk a fight, even divorce.

3. There is a desire to cover up the true identity of the polygamist civil servant, from his new wife and family. One informant in the study stated that he was single and did not have a wife and children. This is done in order to carry out polygamous marriages easily to avoid refusal from the families. Likewise, the civil servant polygamist covered up his polygamous marriage from his first/second/third wives to avoid contention and divorce. However, later in life also revealed polygamous marriages, both by his first/second/third and fourth wives. So that later when they find out, they are forced to accept their husband's polygamous marriage as their life destiny.
4. There are other reasons of love and disharmony relationship in marriage. In this case, the husband is inclined to conduct polygamous marriage rather than divorce in order to avoid the complexity of administration bureaucracy of civil servant, if the marriage is registered at the office of religious affairs.
5. The independence of leaders in dealing with *siri* polygamous marriage of civil servants is carried out at their work institutions. The leaders consider that marriage, polygamy and divorce as internal problems in the family that should not be interfered with. So, the leader's just process the cases through the staffing legal mechanism if there found written complaints from the injured parties, such as wives or their children.

Based on the above analysis, it is concluded that the motives and backgrounds of unregistered polygamous marriages among civil servants come from their mental construction that are different from each other. So that there are still other possible reasons behind the practices of *siri* polygamy marriages. However, the five mentioned reasons are the most dominant factors.

The Wives' Financial Problem, Social Fate and Loss of Children's Welfare in Unregistered Polygamous Marriage among Civil Servants

Unregistered marriage is a marriage based on religious rules or customs and is not documented in the Office of Religious Affairs. Likewise, *siri* polygamous marriage is carried out in secret and not recorded at all. It will bring bad impacts to the rights and obligations of husband and wife, the status of children born, the status of shared property and the issues of descent/nasab. Polygamy is closely related to the issues of justice and family welfare.

Based on the results of research from Gregg Strauss (2012), this correlation of polygamy with discrimination and abuse is seriously troubling, but its underlying causes are difficult to discern. Contemporary polygyny is often accompanied by sexist culture and theology, hierarchical power relations, and significant poverty. Many polygamists care for their spouses and their children and strive to avoid unfair divisions of labor. If social features other than polygamy cause the abuse and discrimination, then the stigma that isolates polygamist communities may only exacerbate these harms. If polygamists could live openly, they might more readily report physical abuse. The law could enforce strict rules about marriage age, and it would be harder to coerce women into marriage by restricting their educational or economic opportunities. In any case, abuse, discrimination and economic coercion can and should be condemned wherever it occurs, independent of the type of marriage.

As happened to Mr. T, he was reported to the head of his institution for not only admitting his child but also not giving financial responsibility to his wife and children.⁶ The same statement was given by Mrs. EV who reported her husband to the office because he did not want to admit the child who was in her womb. She actually did not ask for marriage in a registered manner. She just required her husband to provide her livelihoods and to admit her child in the womb. But Mr. OA did not grant her requests. Finally, he got staffing sanction namely not being issued Decree on Appointment of Civil Servants.⁷

Likewise, Mrs. B, as the first wife of Mr. S, had never gotten a living and education costs for her children. Mr. S went and changed wives, had never taken responsibility for his family. All family

⁶Indepth Interview with Mr. N on 7 September 2019 at Plamongan, Semarang City

⁷Indepth Interview with Mrs. EV, Mr. OA's second ex-wife, who has now remarried and follows her husband to live in Jakarta. The interview was conducted at his bag shop in Mangga Dua Square Jakarta on August 25, 2019.

living expenses have been borne by Mrs. B, who works as a nurse at Sultan Agung Islamic Hospital.⁸

It is different from polygamy practiced by Mr. NS. His first wife was also a civil servant, who worked as an elementary school teacher and his second wife works as a politician. His wives have enough income to finance their daily lives. Until now, his polygamous marriage still survives no divorce or employment sanctions he received, because there has never been a complaint from his wives and children. He tried to meet the physical and spiritual needs of his wives and children. In addition, he also tried to maintain harmony and good relations with his wives and children.⁹

Mr. P has different experience. He always fulfills all his responsibilities towards his first wife and both, as well as his children even though he has been dismissed as a civil servant and no longer has a monthly salary. Unfortunately, he finally divorced his first wife, but his responsibility to provide his children necessities was still given.¹⁰

Based on the interviews, it is emphasized that justice is absolutely demanded for the case of polygamous marriage, both normatively, sociologically and philosophically. The Qur'an has clearly required it, and then it is elaborated in both the Marriage Law and the Staffing Regulations. Sociologically, civil servants who carry out polygamy can be categorized into 2, namely:

1. Polygamists with a good faith are responsible to provide justice for their wives and children. As a result, family relationships between them are maintained, all the necessities of life can be fulfilled, so that the civil servant polygamists did not get staffing sanctions.
2. Polygamists with having no responsibility and injustice to his wives and children. As a result, his wives and children are neglected, family relations are not good, there are quarrels and strife that continue to lead the wives complain to the heads of institution and ultimately the husbands get sanctions of dismissal as civil servants.

Conclusion

Based on the aforementioned discussion and analysis of all problems in this study, it is

concluded that: searchers concluded that Polygamy *siri* among civil servants does occur in a number of institutions, with a variety of reasons and disciplinary law enforcement personnel. 1). Law Culture of Civil Servant Polygamy occurs on the basis of mental construction of polygamists, because polygamous marriages are motivated by different reasons among the perpetrators, namely: a). The polygamists are reluctant to tell his first wife and family about his polygamous marriage as well as do not want to divorce his first wife. b). Unwillingness to administer the staffing bureaucracy because the polygamists must get permission from the leaders and they have to follow the complicated requirements. c). There are problems in her marriage. 2). Based on the legal culture background of *siri* polygamous marriage, it can be characterized that: a). Polygamists with a good faith are responsible to provide justice for their wives and children. As a result, family relationships between them are maintained, all the necessities of life can be fulfilled, so that the civil servant polygamists did not get staffing sanctions. b). Polygamists with having no responsibility and injustice to his wives and children. As a result, his wives and children are neglected, family relations are not good, there are quarrels and strife that continue to lead the wives complain to the heads of institution and ultimately the husbands get sanctions of dismissal as civil servants.

Recommendation

The research result with this interdisciplinary analysis gives recommendations to several parties, especially civil servants and relevant government institution, to solve the problems and to benefit the community. For institutional leaders, they should to make a legal break (law breaking) by issuing discretion and policies related to polygamy carried out by civil servants.

Institutional leaders can facilitate and carry out mediation efforts towards civil servant polygamists and their wives to find solutions to be able to mutually accept polygamous marriages that have already occurred. Subsequently, permission was granted to carry out its bat marriage through a religious court, so that this polygamous marriage can be registered at the Office of Religious Affairs and finally has legal certainty. This is in order not only to save polygamy families, both wives and children, but also to save the career of the civil servants themselves, so that they could continue to work and be able to provide for all their wives and children necessities.

⁸Indepth Interview with Mrs. B in her office at Sultan Agung Islamic Hospital Semarang, September 17, 2019.

⁹Indepth Interview with Mr. NS on August 19, 2019 in the Room of the Family Law Lecturer at the Faculty of Sharia UIN Walisongo Semarang.

¹⁰Indepth Interview with Effendy Lord Simanjuntak, advocates who handle employment cases on behalf of Mr. P, on Sept 11, 2019, in his Law Office.

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